(3)

CH/WP

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CHHATTISGARH)

WRIT PETITION NO. 2236 OF 2003

PETITIONER : Kalyan Singh,son of Lalman Patel,
aged about 45 years,
Panchayat Secretary,(removed)
Gram Panchayat Dhaurabhatha,
Block Sarangarh,District-Raigarh,(C.G.

P.R. No. 8/12/03
Presented by H.S. Patel
dated 26.12.03

V E R S U S

RESPONDENTS : 1. State of Chhattisgarh,through,
Secretary,
Panchayat and Welfare Department,
D.K.S.Building,Mantralay, Raipur,
District-Raipur,(C.G.)

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2. Collector, Raigarh,
District-Raigarh,(C.G.)

3. Sub Divisional Officer,(Revenue)
Sarangarh,District-Raigarh,(C.G.)

4. Janpad Panchayat,Sarangarh,through
Chief Executive Officer,Janpad Panchayat
Sarangarh,District-Raigarh,(C.G.)

5. Gram Panchayat,Dhaurabhatha,through
Sarpanch of Gram Panchayat
Dhaurabhatha,Tehsil-Sarangarh,
District-Raigarh,(C.G.)

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(58)

आदेश पत्रक

मामला क्रमांक W.P.No. 2236/03 **सन्** 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	2.5.2005 Shri B.D. Guru, counsel for the petitioner. Shri G.K. Beriwal, Dy. Adv. General for the State /respondent No.1 to 3. None on behalf of respondent No.4 & 5. Heard learned counsel for the parties for final disposal of the matter. The petitioner's case is that he was working as Panchayat Secretary (Panchayat Karmi) of Gram Panchayat Dhaurabhata. On 14.3.2000 the Gram Sabha passed a Resolution No.1 resolving for removal of the petitioner from the post of Panchayat Secretary. Based on the said resolution the Sub Divisional Officer intimated the petitioner vide Annexure P-5 & P-6 regarding removal of the petitioner from the post of Panchayat Secretary. Thereafter, vide resolution-dated 16.4.2000 Gram Sabha recommended removal of the petitioner and in pursuant to that the SDO recommended removal of petitioner from the post of Secretary through Chief Executive Officer to the Collector vide report dated 3.5.2000 (Annexure P-7) and the Collector vide order dated 6.6.2000 (Annexure P-2) cancelled the notification regarding appointment of the petitioner as Panchayat Karmi. Against the said order the petitioner preferred an appeal to the Commissioner, Bilaspur Division, Bilaspur, who allowed the appeal of the petitioner and remanded the case to the Collector vide Annexure P-8. However, the Collector again vide order dated 28.4.2003 (Annexure P-1) rejected the petitioner's case. Further case of the petitioner is that the resolution passed by the Gram Sabha is illegal and arbitrary as no notice was	

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आदेश पत्रक

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

given to the petitioner regarding meeting of Gram Sabha and even in the notice calling for meeting of Gram Sabha was also illegal. Ultimately, the petitioner prayed for quashment of the impugned orders annexure P-1 & P-2 and also removal of the petitioner from the post of Panchayat Secretary.

Return has been filed on behalf of respondents No.1 to 3 in which it has been mentioned that points raised before the authority have been considered and the petitioner has failed to point out that how the order is perverse. It has been mentioned that vide order-dated 6.6.2000 the Collector has not cancelled the declaration as Panchayat Karmi, but has cancelled the order regarding the appointment of the petitioner as Secretary of Gram Panchayat. It has further been mentioned that order of removal of the petitioner has never been challenged and this petition has been filed after a lapse of three years, therefore, the petition of the petitioner is liable to be dismissed on the ground of delay.

It is an admitted position that the petitioner has been removed from the post of Panchayat Secretary on the basis of resolution dated 14.3.2000 passed by Gram Sabha in which certain allegations were levelled against the petitioner regarding taking bribe, misusing the authority and drawing the amount from the bank under the forged signatures of the then Sarpanch. It is also admitted fact that being the Panchayat Karmi, the petitioner's services were governed by the M.P. / C.G. Panchayat Service (Discipline & Appeal) Rules, 1999 which came into force w.e.f. 22.6.1999 and Clause (3) of Rule 1 of Part-I envisages that "*the rules shall apply to all persons employed in*

(पीछे देखिये)

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

connection with the affairs of Zila Panchayats, Janpad Panchayats and the Gram Panchayats and discharging the functions of Zila Panchayats, Janpad Panchayats and the Gram Panchayats provided that nothing in these rules shall apply to officers and servants of the state service who are posted under the Panchayats under Section 69 or are on lone service to the Panchayats under Section 71 of the Act."

Therefore, in view of the above provision, the services of the petitioner were governed by these rules. Rule 5 of Rules 1999 prescribes about the penalties to be imposed on Panchayat Karmi. Rule 5(a) defines 'minor penalties'. Rule 5(b) defines 'major penalties'. The procedure for imposing major penalties has been incorporated in Rule 7which reads as under

> *"no order, imposing on a member of the Panchayat Service, any of the penalties specified in clause (iv) to (via) of rule 5 shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided."*

Sub-rule (2) of Rule 7 envisages regarding '*framing of definite charges on the basis of allegations and shall communicate such charges, along with statement of the allegations, to the member of the Panchayat Service and also require to submit, within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person.*' Rule 4 further envisaged that "*on receipt of the written statement of defence or if any such statement is not received within the time specified, the disciplinary authority may himself enquire into such of the charges as are not admitted or appoint an Enquiry Officer to hold the inquiry and forward to him his report.*

(पीछे देखिये)

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आदेश पत्रक

मामला क्रमांक ..... WP 2236/03 ..... **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Sub-rule (7) further envisages that "*at the conclusion of the inquiry, the Enquiry Officer shall prepare a report of the inquiry, recording his findings on each of the charges together with reasons therefore* and as per sub-rule (10) the disciplinary authority shall consider the representation, if any, made by the person charged in response to the notice and determine the penalty, if any, should be imposed and shall pass appropriate order on the case.

None of the above provisions have been complied with in this case, therefore, the impugned orders are liable to be quashed on this score only, as has been held by this Court in the matter of Prakash Chandra Patel Vs. State of Chhattisgarh & others reported in 2004 Chhattisgarh Law Times 142.

In the result, the petition of the petitioner is allowed, impugned orders are quashed and respondents are directed to reinstate the petitioner in service.

Consequently, all the pending applications stand disposed of.

Certified copy as per rules.

Sd/-
L.C.BHADOO
Judge

Roshan